8475 Dt. 23-10-89
GS Ahluwalia

(02)

Dr

23/10/89

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Criminal Appeal No. 1020 Of 1989.

Appellant (in jail) :- Peelsai, S/o Chaitram, aged about 59 years, R/o Airammar, Police Station Bijapur, Distt. Bastar.

- V e r s u s -

Respondent :- State of Madhya Pradesh.

Conviction	Sentence
U/s 302 I.P.C.	Life Imprisonment

APPEAL UNDER SECTION ~~374~~ OF CR.P.C. AGAINST THE JUDGMENT AND SENTENCE DATED 6-10-89 PASSED BY SHRI KAMIL KHALKHO, SECOND ADDITIONAL DISTRICTJUDGE, JAGDALPUR.

INST no 17487

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1020/1989

Peelsai

-Versus-

State of Madhya Pradesh

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Shri Ranbir Singh, Advocate with Shri Sourabh and Ms. Samta Jain for the appellant.

Shri Sachin Singh Rajput, P.L. for the State.

J U D G M E N T

Per Dilip R. Deshmukh, J.

Heard.

2. The appellant stands convicted under Section 302 I.P.C. for committing murder of Shanti Bai, widow of Premlal in the intervening night of 7th and 8th April 1985 in village Kueynar, district Bastar and has been sentenced to undergo imprisonment for life. Co-accused Sawantram who along with the accused appellant was charged for the same offence under Section 302/34 I.P.C., was acquitted.

3. The prosecution story lies within a narrow compass. The deceased Shanti Bai was a married woman. Her first husband had expired. Prior to the date occurrence, Shanti Bai was carrying pregnancy of 8 months and used to live alone in her house. It is alleged by the prosecution that the appellant-Peelsai had illicit relations with Shanti Bai who had conceived from him. On 4.4.1985 there was a panchayat in the village in which Shanti Bai had stated that she was pregnant through Peelsai. Peelsai had

denied this allegation. When Shanti Bai had persisted in her allegation Peelsai had threatened Shanti Bai. On 08.04.1985 one Sukhiram saw the dead body of Shanti Bai inside her house and reported the same to Kotwar Bundi Bichham (P.W.1) who lodged the marg intimation Ex.P.5. The vomits of the deceased and other insignificant articles were seized on 9.4.1985 from the house of Shanti Bai. Post-mortem conducted by Dr. M.L.Gupta (P.W.13) on 9.4.1985 at 8.00 A.M. revealed one bruise over the anterior aspect of neck admeasuring 6" x 1 ½", bruises over the back of the left shoulder just over the acromion processes admeasuring 1" x 1", some discharge from the vagina and bleeding from nose. Abdomen was enlarged and 8th month of pregnancy was seen. In his opinion, death of Shanti Bai was due to Asphyxia caused by strangulation resulting in obstruction in the air passage i.e. Trachea and was homicidal. During the investigation, it was found that Baratu Ram P.W.3 had seen the cycle of the appellant parked outside the house of the deceased in the evening before the occurrence. After completion of investigation, the accused appellant was brought to the trial.

4. The accused appellant abjured his guilt. He denied that Shanti Bai had conceived from him. In support of this, he led the evidence of Dr. K.K.Harzpal, Assistant Surgeon, D.W.1 who stated that on examination of the semen of the accused-appellant, he did not find any spermatozoa. D.W.2 Dr. L.K.Naik has testified to show that he had suggested for the examination of the semen of the appellant since the appellant had already undergone Vasectomy Operation. Investigating Officer P. Santosh Rao P.W.12

has also, in paragraph 4, stated that during investigation, the report of examination of the semen of the accused was received which had confirmed that the accused could not reproduce though he was capable of performing sexual intercourse.

5. The trial Court had in paragraph 9 of the judgment framed two parameters for consideration of the circumstantial evidence where were as under:

a) The accused appellant having been last seen with the deceased; and

b) Motive for murder.

So far as the first question was concerned, the trial Court in paragraph 13 of the judgment held that it was not proved that the accused-appellant Peelsai and co-accused Sawant Ram were last seen with the deceased before the occurrence. Thus the main link in the chain of circumstantial evidence is completely missing. It was also held that there was not even an iota of evidence against the co-accused Sawantram. Having held this, thereafter the Court upon scrutiny of the prosecution evidence found in paragraph 17 that the appellant had the motive since Shanti Bai had leveled false allegation in the Panchayat of having conceived from him. On this basis alone, the learned trial judge convicted the appellant Peelsai under Section 302 I.P.C.

6. Learned counsel for the appellant mainly contended that motive alone could not be sufficient to convict the appellant. He further contended that the conviction under Section 302 I.P.C. and sentence awarded thereunder is not sustainable in law since there

was no legal and reliable circumstantial evidence to connect the appellant-Peelsai with the offence of murder of Shanti Bai.

7. On the other hand, learned Panel Lawyer for the State contended that since Shanti Bai had in Panchayat levelled an allegation against the appellant that she had conceived from him, therefore, the appellant alone had the requisite motive for committing the murder of Shanti Bai. He has further argued that there is some evidence of P.W.3 Baratu Ram who had seen the cycle of the appellant standing outside the house of the deceased in the evening before the occurrence. He has thus argued that the trial Court has rightly convicted the appellant for the offence of murder of Shanti Bai.

8. The law relating to appreciation of circumstantial evidence is now well settled. Where there is no direct evidence relating to commission of the crime the circumstantial evidence should always be consistent with the hypothesis of the guilt of the accused and inconsistent with his innocence. It should be borne in mind that the chain of circumstances furnished by the prosecution should be so complete that it does not lead to any reasonable ground for drawing an inference consistent with the innocence of the accused. The incriminating circumstances used against the accused must be such so as to lead only to a singular hypothesis of guilt and reasonably exclude every possibility of the innocence of the accused. The circumstances which are consistent only with the hypothesis of guilt of the accused should also be fully established and should be of conclusive nature.

9. Motive for the commission of an offence is a weak type of circumstantial evidence and by itself cannot complete the chain of circumstances leading to the hypothesis of guilt. It may at the most be called to be merely a link and not the chain itself. There may be cases in which an offence may be committed intentionally without there being any motive for committing the offence. In such a case, if the intention to commit the offence and the circumstances are fully established then merely because of the absence of motive, the circumstantial evidence cannot be found lacking to draw the conclusion of the guilt of the accused. Similarly, therefore, where neither the intention nor the act or any other circumstances are existing in the prosecution evidence, the mere fact that the appellant could have the motive for the commission of the crime can never be said to be sufficient to bring home the guilt of the appellant.

10. In this case, the circumstance which has been putforth by the prosecution against the appellant is that the deceased Shanti Bai had in the village panchayat alleged that she had conceived from the appellant. Suraj Bai P.W.5 has also stated that after the panchayat she had seen Shanti Bai crying who had told her that Peelsai was denying the parent-hood of the child conceived by her. Baratu Ram P.W.3 has admitted that the appellant had built a house for Shanti Bai and in the Panchayat when Shanti Bai had stated that she would go to the house of Peelsai, he had refused to accept her in his house. Peelsai had also said in the Panchayat that if Shanti Bai would come to his house, he would break her feet. The testimony of Budhram P.W.6

is wholly unreliable because he has contradicted his own version in the examination-in-chief by admitting that Peelsai had stated in the Panchayat that since he had undergone Vasectomy operation, Shanti Bai could not conceive from him. The testimony of investigating officer P.W.12 P. Santosh Rao also shows that during investigation the report of semen examination of Peelsai was received which had shown that the accused could not reproduce. The unrebutted evidence of Dr. K.K.Harzpal D.W.1 and Dr. L. K.Naik D.W.2 also fully support the defence of the accused that there was no Spermatozoa in the semen of Peelsai who had under gone the Vasectomy operation. It is thus clear that since the accused had outrightly denied that Shanti Bai had conceived from him as he had already undergone the Vasectomy operation he could not have the requisite motive to commit murder of Shanti Bai because the accused could establish his innocence. The approach of the trial Court while appreciating the evidence has been wholly incorrect. Once the circumstance of the appellant and the accused having been seen with the deceased before the occurrence was demolished, there remained nothing in the prosecution evidence to even provide a link to form a chain of circumstances. The inference drawn by the trial Court in paragraph 15 of the judgment is nothing but conjectures and surmises.

11. In State of Punjab v. Sucha Singh and others, **A.I.R. 2003 S.C. 1471** it has been held that motive howsoever strong cannot take the place of proof. In this case, while there is no circumstantial evidence to show that the appellant either intended

to commit the murder of Shanti Bai or did any act in furtherance thereof, even the motive for committing her murder is found to be lacking. Thus, the approach of the trial Court in appreciating the evidence has been wholly erroneous. The alleged motive, in this case, is clearly dislodged by the firm assertion by the accused in the Panchayat that he had undergone the Vasectomy operation, and therefore, Shanti Bai could not conceive from him. This fact was also borne out during the course of investigation. Thus, the learned trial Judge stretched his imagination too far to hold the appellant guilty merely on the basis of evidence of motive which failed to inspire confidence.

12. There are four aspects in the commission of an offence. Firstly, the appellant may have the motive which may compel him to form the intention to commit the offence. Thereafter there has to be preparation or some act in furtherance of the intention to commit the offence and lastly the commission of the offence itself. The circumstances in relation to the motive, intention, preparation and commission if established beyond doubt could complete the chain of circumstantial evidence leading to the hypothesis of the guilt. Mere possible motive howsoever strong can not take the place of proof to establish the hypothesis of the guilt of the appellant beyond doubt.

13. Before parting with this appeal, we would like to consider another aspect canvassed before us that the approach of the trial Court in framing the charge under Section 34 of the I.P.C. has been casual. It is well settled that whenever a person is said to have formed a common intention with another for the commission of an offence, the act which was committed by the person who

committed the offence as far as possible be specifically mentioned in the charge. If the trial Judge had borne this in mind, it could have been noticed at the stage of charge itself about the chain of circumstantial evidence. The trial Court, therefore, may be well advised to mention the nature of the act committed or omitted by the accused in furtherance of the common intention of co-accused.

15. The contention of the learned counsel for the appellant that there was no motive to connect the accused with the crime must be accepted since the very foundation of the prosecution case has crumbled down and the motive if any has become inconsequential in this case. Even the motive to commit murder of Shanti Bai has not been fully established in the instant case.

16. In the ultimate analysis, the appeal is allowed. The conviction of the appellant under Section 302 I.P.C. for committing the murder of Shanti Bai and the sentence awarded thereunder are set aside. The appellant is acquitted of the charge under Section 302 I.P.C. Bail bonds of the appellant stand cancelled.

Sd/-
Fakhruddin
Judge
16.06.2005

Sd/-
Dilip Raosaheb Deshmukh
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